

Panaji, 19th September, 2015 (Bhadra 28, 1937)

SERIES II No. 25



# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

### GOVERNMENT OF GOA

Department of Agriculture

Directorate of Agriculture

**Order**

No. 8/15/2015-16/D.Agro(Part)/134

Government is pleased to grant extension of ad hoc promotion to Shri Madhav B. Kelkar, Assistant Director of Agriculture in the Directorate of Agriculture for the interim period w.e.f. 05-07-2015 to 20-07-2015.

This is issued with due concurrence of the Goa Public Service Commission vide their letter No. COM/II/11/2(2)/2014/940 dated 28-08-2015.

By order and in the name of the Governor of Goa.

*U. B. Pai Kakode*, Director & ex officio Jt. Secretary (Agriculture).

Tonca-Caranzalem, 3rd September, 2015.

**Order**

No. 8/15/2014-15/D.Agro/135

- Read:
- 1) Order No. 8/15/2011/D. Agri/203 dated 27-07-2011.
  - 2) Order No. 8/15/2009/D. Agri/211 dated 03-08-2011.
  - 3) Order No. 8/15/2011/D. Agri/158 dated 28-06-2011.
  - 4) Order No. 8/15/2009/D. Agri/34 dated 23-01-2012.
  - 5) Order No. 8/15/2006/D. Agri/224 dated 28-09-2012.
  - 6) Order No. 8/15/2006/D. Agri/25 dated 25-01-2013.

- 7) Order No. 8/15/2013-14/D. Agri/145 dated 28-05-2013.
- 8) Order No. 8/15/2013-14/D. Agri/320 dated 8-11-2013.
- 9) Order No. 8/15/2014-15/D. Agri/59 and 60 dated 19-06-2014.
- 10) Order No. 8/15/2014-15/D. Agri/270 dated 05-02-2015.

Government is pleased to grant extension of ad hoc promotion to the following officers for a further period of six months or till regularization as mentioned against their names on the same terms and conditions as indicated in the above stated Orders.

Sr. No.	Name & Designation of the Officers	Date of Extension
1.	Shri Nevil Alphonso, Assistant Director of Agriculture	05-05-2015 to 04-11-2015.
2.	Smt Ana Dias e Camara, Assistant Director of Agriculture	22-05-2015 to 21-11-2015.
3.	Shri Joaquim D'Souza, Assistant Director of Agriculture	22-05-2015 to 21-11-2015.
4.	Shri Chintamani Perni, Assistant Director of Agriculture	22-05-2015 to 21-11-2015.
5.	Shri Shaba Verenkar, Assistant Director of Agriculture (now transferred to KVK, South as Subject Matter Specialist (plant protection)	22-05-2015 to 21-11-2015.
6.	Shri Dattaprasad Dessai, Agriculture Officer	05-05-2015 to 04-11-2015.
7.	Shri Anil A. De Noronha, Agriculture Officer	05-05-2015 to 04-11-2015.
8.	Shri Shivram B. Naik, Agriculture Officer	05-05-2015 to 04-11-2015.

OFFICIAL GAZETTE — GOVT. OF GOA

SERIES II No. 25

19TH SEPTEMBER, 2015

This is issued with due concurrence of the Goa Public Service Commission vide their below listed letters:

- 1) Letter No. COM/II/11/2(2) 2014/940 dated 28-08-2015.
- 2) Letter No. COM/II/11/2(3) 2014/939 dated 28-08-2015.

By order and in the name of the Governor of Goa.

*U. B. Pai Kakode*, Director & ex officio Jt. Secretary (Agriculture).

Tonca-Caranzalem, 3rd September, 2015.



Department of Education, Art & Culture

DIRECTORATE OF EDUCATION

—  
Order

No. 1(2)-22-2005/SE/Part/971

On the recommendation of the Goa Public Service Commission as conveyed vide letter No. COM/II/1115(4)/2014/815 dated 28-11-2014, Government is pleased to promote Ms. Maria Rose Grace D'Souza, Dy. Education Officer/Principal, Govt. Higher Secondary School/Vocational Education Officer/Dy. Director, SIE to the post of Asstt. Director of Education on regular basis with retrospective effect on 28-11-2014 in the pay scale of Rs. 15,600-39,100+ Grade Pay of Rs. 7,600/- + 02 non-compounded increments thereby fixing the initial pay in the pay band.

She stands posted as Asstt. Director of Education, Administration-III Section, Directorate of Education, Porvorim w.e.f. 30-04-2015 (a.n.).

She shall be on probation for a period of two years.

She shall exercise option for fixation of pay in terms of FR. 22(I)(a)(1) within one month from the date of issue of this order.

She shall draw her pay and allowances for the month of March, 2015 and April, 2015 against the vacant post of Asstt. Director of Education, Vocational Section, Directorate of Education, Porvorim and thereafter against the vacant post of Asstt. Director of Education, Administration-III Section, Directorate of Education, Porvorim.

She shall give acceptance for the above promotion.

Her promotion to the post of Asstt. Director of Education effected vide Order No. 1(2)-22-2005/

/SE/Part/860 dated 30-04-2015 and regarding exercising option by her for fixation of pay and also giving acceptance for promotion by her as per Addendum No. 1(2)-22-2005/SE/Part/881 dated 29-05-2015 stands cancelled.

By order and in the name of the Governor of Goa.

*Gajanan P. Bhat*, Director & ex officio Jt. Secretary (Education).

Porvorim, 2nd September, 2015.

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**Addendum**

No. 1-(2)-10-2003/SE/968

Ref.: Order No. (1)-3-2013/SE/430 dated 05-09-2013.

The following shall be added before the last para of the above cited order:-

The posting of Shri Sadashiv B. Naik, Dy. Education Officer/Principal, GHSS/VEO/Dy. Director, SIE as Joint Secretary, Goa Board is on "transfer on Deputation" and shall be governed by the standard terms and conditions of transfer on deputation as contained in Personnel Department's Office Memorandum No. 13/4/74-PER dated 20-11-2013 and as amended from time to time.

By order and in the name of the Governor of Goa.

*Gajanan P. Bhat*, Director (Education).

Porvorim, 31st August, 2015.

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**Addendum**

No. 1-(2)-10-2003/SE/969

Ref.: Order No. 1(1)-3-2013/SE/670 dated 11-07-2014.

The following shall be added before the last para of the above cited order:-

The posting of Shri S. F. Koti, Dy. Education Officer, Central Educational Zone, Panaji as Joint Secretary, Goa Board is on "transfer on Deputation" and shall be governed by the standard terms and conditions of transfer on deputation as contained in Personnel Department's Office Memorandum No. 13/4/74-PER dated 20-11-2013 and as amended from time to time.

By order and in the name of the Governor of Goa.

*Gajanan P. Bhat*, Director (Education).

Porvorim, 31st August, 2015.

OFFICIAL GAZETTE — GOVT. OF GOA

SERIES II No. 25

19TH SEPTEMBER, 2015

Directorate of Higher Education

**Order**

No. 23/4/90-EDN(Part) VOL. II/2344

Ms. Maria Fatima De Souza, Associate Professor of Commerce of the Government College of Commerce, Borda, Margao is hereby directed to officiate as Acting Principal, Government College of Commerce, Borda, Margao, in addition to her own regular duties, with immediate effect and until further orders.

Ms. Maria Fatima De Souza, shall function as Drawing and Disbursing Officer of the Government College of Commerce, Borda, Margao while officiating as Acting Principal of the said College.

By order and in the name of the Governor of Goa.

*Sneha S. Morajkar*, Under Secretary (HE).

Porvorim, 28th August, 2015.

**Order**

No. 21/2/2013-DHE/Vol.III/1602/2389

Read: This Office Memorandum No. 21/2/2013-DHE/Vol. III/1602 dated 22-05-2015.

On recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/1/5/78(12)/2013/972 dated 09-04-2015, Government is pleased to appoint Kum. Niyati Gopinath Kalangutkar, on temporary basis to the post of Assistant Professor in Geology (Group 'A', Gazetted) on an initial pay of Rs. 15,600/- in the Pay Band of Rs. 15,600-39,100+ AGP Rs. 6,000/- and other allowances as admissible from time to time as per the terms and conditions contained in the memorandum dated 22-05-2015 referred to above with immediate effect. Upon her appointment she is posted in Government College of Arts, Science and Commerce, Sanquelim-Goa.

Kum. Niyati Gopinath Kalangutkar will be on probation for a period of two years.

By order and in the name of the Governor of Goa.

*Sneha S. Morajkar*, Under Secretary (HE).

Porvorim, 31st August, 2015.

Directorate of Art & Culture

**Corrigendum**

No. DAC/Accts./RGKM/Committee/2013/5280

Read: Order No. DAC/Accts./Comm.TA/2015-16/5119 dated 21-08-2015.

In the aforesaid order, the name of the President may be read as Shri Agostinho Temudo instead of Shri Agostinho Temude and the word appoint may be read as "nominate".

Other contents of the order remain unchanged.

By order and in the name of the Governor of Goa.

*Prasad Lolayekar*, Director & ex officio Addl. Secretary (Art & Culture).

Panaji, 28th August, 2015.

**Corrigendum**

No. DAC/Accts./RGKM/Committee/2013/5281

Read: Order No. DAC/Accts./Comm.TA/2015-16/5120 dated 21-08-2015.

In the aforesaid order, the names of the following Members on General Council of Tiatr Academy may be read as follows:

1. Sr. No. 3 may be read as Shri Francis Misquita instead of Shri Francis Mesqueta.
2. Sr. No. 4 may be read as Shri Teutonio D'Costa instead of Shri Teoteno D'Costa.
3. Sr. No. 8 may be read as Shri Tomazinho Cardozo instead of Shri Tomazino Cardoz.
4. Sr. No. 9 may be read as Shri Antonio Rosario Fernandes (Roseferns) instead of Shri Rosario Antonio Fernandes (Rose Fern).
5. Sr. No. 2 may be read as Shri Joaquim M. Da Cruz instead of Shri Joaquim M. Cruz.

Other contents of the order remain unchanged.

By order and in the name of the Governor of Goa.

*Prasad Lolayekar*, Director & ex officio Addl. Secretary (Art & Culture).

Panaji, 28th August, 2015.

## OFFICIAL GAZETTE — GOVT. OF GOA

SERIES II No. 25

19TH SEPTEMBER, 2015

## Department of Finance

Revenue & Control Division  
Directorate of Accounts—  
Order

No. DA/Admn/45-6/2015-2016/TR-1936/80

Government is pleased to post Shri Gajanan C. Arabekar, Assistant Accounts Officer in the O/o the River Navigation Department, Betim-Goa, with immediate effect, consequent upon his repatriation from the Corporation of City of Panaji, Panaji-Goa, thereby relieving Shri Bernard Devassy, Assistant Accounts Officer of additional duties, Panaji-Goa.

By order and in the name of the Governor of Goa.

*G. P. Kanekar*, Director & ex officio Joint Secretary (Accounts).

Panaji, 31st August, 2015.



## Department of Home

Home—General Division

Office of the Director General of Police

—  
Order

No. ES-I(A)/DySPs/6657/2015

The below mentioned Dy. Superintendents of Police are hereby transferred and posted at the places indicated against their names with immediate effect, in public interest.

Sr. No.	Name of DySP	From	To
1	2	3	4
1.	Shri Gajanan V. P. Dessai	SDPO, Bicholim	Vice Principal, PTS, Valpoi.
2.	Shri Ramesh Y. Gaonkar	DySP, PHQ, Panaji	SDPO, Bicholim.
3.	Shri Lawrence D'Souza	SDPO, Vasco	DySP PHQ, Panaji (Shall hold additional charge of DySP, MT Section).
4.	Shri Mohan S. Naik	SDPO, Margao	SDPO, Vasco.
5.	Shri Dinraj R. Govenker	SDPO, Ponda	SDPO, Margao.

1	2	3	4
6.	Smt. Sunita Sawant	DySP, SIT, Panaji	SDPO, Ponda.
7.	Shri Subhash R. Goltekar	SDPO, Quepem	Dy. Commandant 1st IRBn (Shall look after the work of Commandant 1st/2nd & 3rd IRBn).
8.	Shri Sammy Tavares	DySP, CB, Ribander	SDPO, Quepem.

2. This issues with the approval of the Police Establishment Board.

*V. U. Borkar*, Superintendent of Police (HQ).

Panaji, 30th June, 2015.



## Department of Forest

—  
Order

No. 4-2-2011/FOR/226

Read: Government Order No. 4-2-2011/FOR dated 14-08-2015.

In partial modification to the Government Order read at preamble, the transfer and posting of Shri Vishal Surve, Assistant Conservator of Forests, stands cancelled, and shall continue to work at Research & Utilization Division, Margao.

Consequent to above, the transfer and posting of the following Assistant Conservator of Forests is hereby affected as under with immediate effect and until further orders:

Sr. No.	Name of the Asstt. Conservator of Forests	Place of posting	Transferred at
1.	Shri Amar Heblekar	Principal Forest Training School, Valpoi	Principal Forest Training School, Valpoi shall also hold the additional charge of Legal Cell in addition to his own duties.

This issues with the approval of the Government.

By order and in the name of the Governor of Goa.

*Neela S. Dharwadkar*, Under Secretary (Forests).  
Porvorim, 27th August, 2015.

## Department of Labour

—  
Notification

No. 28/1/2015-Lab/Part-I/799

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 08-07-2015 in reference No. IT/10/11 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*Shashank V. Thakur*, Under Secretary (Labour).  
Porvorim, 25th August, 2015.

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IN THE INDUSTRIAL TRIBUNAL  
AND LABOUR COURT  
GOVERNMENT OF GOA  
AT PANAJI

(Before Ms. Bimba K. Thaly, Presiding Officer)

Ref. No. IT/10/11

Shri Sakharam Gad & 13 Others  
Rep. The General Secretary,  
Gomantak Mazdoor Sangh,  
Tiswadi, Ponda, Goa                    ... Workman/Party I

V/s

M/s. Chowgule Industries  
Pvt. Ltd.,  
Campal, Panaji-Goa                    ... Employer/Party II

Workman/Party I represented by Shri P. Gaonkar.  
Employer/Party II represented by Adv. Shri R. Kinnerkar.

## AWARD

(Passed on this 8th day of July, 2015)

By order dated 27-05-11, bearing No. 28/8/2011-LAB/189 and corrigendum dated 28-10-11, the Government of Goa in exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947 (for short The Act) has referred the following dispute for adjudication.

"(1) Whether the action of the management of M/s. Chowgule Industries Private Limited, Campal, Panaji, Goa, in not paying the Variable Dearness Allowances as per existing settlement dated 22-3-2005 to the following 14 workmen represented by the Gomantak Mazdoor Sangh, Ponda, is legal and justified?

1. Mr. Sakharam Gad.
2. Mr. Kiran Gadekar.
3. Mr. Abhinay Kerkar.
4. Mr. Petrose Fernandes.
5. Mr. Amol Gavde.
6. Mr. Kedar Naik.
7. Mr. Darshan Chari.
8. Mr. Dinesh Gaonkar.
9. Mr. Parag Gawande.
10. Mr. Gourish Gadekar.
11. Mr. Vaibhav Khadapkar.
12. Mr. Goraknath Dhargalkar.
13. Mr. Nitesh Tari.
14. Mr. Navnath Gad.

(2) If not, to what relief the workmen are entitled to?"

2. Upon receipt of the reference, a case was registered under No. IT/10/11 and registered AD notices were issued to both the parties and upon service, Party I filed the claim statement at Exb. 4 and Party II filed the written statement at Exb. 5. Party I then filed the rejoinder at Exb. 6.

3. In the claim statement it is in short the case of Party I/workmen that the employer and the committee of Chowgule Industries. Ltd (Automobile Division) Workers Unity entered into a settlement dated 22-3-05 which was signed under sec. 12(3) r/w sec. 18(3) of the Act. It is stated that as per this settlement it was agreed that all the workmen will be paid Variable Dearness Allowances (VDA) on the basis of the All India Consumer Price Index (Base 1960= 100). The parties had also agreed for a neutralization rate of Rs. 1.85 per point rise/fall from 870 to 1000 points and Rs. 1.95 per point rise/fall from 1001 and above. It is stated that this settlement covered all the workmen at that time and was operative from 01-07-2004 to 30-06-2008. It is stated that in May 2008 almost all permanent workmen employed at Sales and Services Centers of Party II joined Gomantak Mazdoor Sangh (GMS for short) and this fact was communicated to Party II by GMS by letter dated 14-5-08. It is stated that the existing settlement was to expire on 30/6/08 and the workmen submitted COD vide letter dated 10-6-08. It is stated that the matter of COD is pending before this Tribunal under Ref. No. IT/29/2009. It is stated that GMS then realized that the workers whose services have been confirmed subsequent to the settlement dated 22-3-05 were not paid any VDA and therefore GMS on behalf of these 14 workmen wrote a letter dated 6-7-09 to Party II explaining the position and demanding that their VDA be paid.

Correspondence was then exchanged between the parties and Dy. Labour Commissioner, Panaji however finally the matter ended in failure. It is stated that the benefits of a settlement continue to flow even after its expiry and by virtue of sec. 18 of the Act the benefits of a settlement are extended to all the workmen who have been confirmed in service subsequent to the settlement. It is therefore prayed to hold that the action of Party II in not paying VDA as per the settlement dated 22-3-05 to the 14 workmen is illegal and unjustified and to order Party II to pay VDA as per this settlement from the respective date of joining of the 14 workmen mentioned in the order of reference.

4. In defence Party II has denied the case setup by Party I in the claim statement and has stated that Party I union has no locus standi to espouse the present demand and that the said demand cannot and do not constitute an Industrial Dispute. It is stated that the said demand is subject matter in Ref. IT/29/09 and therefore it is barred by res-judicata or principles analogous to res-judicata. It is stated that the terms of reference are defective as it presupposes payment of VDA to certain class of employees who were not even parties to the said settlement. It is stated that Party II has complied with all its rights and obligations as per the said settlement dated 22-3-05 and that they are aware that the benefits of the said settlement continue even after termination or till replaced by a new settlement, Award or agreement. It is stated that the concerned 14 employees were not parties to the said settlement and also never extended any benefits of the said settlement. It is stated that the concerned persons cannot make a grievance of not being paid VDA, whether by settlement or not when the service conditions agreed by them with the management did not comprise of the component of VDA. It is stated that instead of VDA the concerned employees are receiving incentives of monthly average amounting to Rs. 4000/- to 6500/- and from the day the concerned employees were engaged, the VDA was not a part or parcels of their remuneration and neither they were party or beneficiary to the settlement dated 22-3-05. It is stated that the concerned employees were given benefits of mutually agreed terms and conditions and therefore they did not make any grievance regarding the same. It is stated that any additional burden if imposed on the company would have grave consequences for the Industry in general and also a crippling effect on its financial capacity there by Jeopardizing the very survival of the

company in the highly competitive market. It is stated that the service conditions, mutually agreed with the concerned employees did not include payment of VDA. Thus, amongst above and other objections, Party II has prayed to reject the reference under consideration.

5. In the rejoinder Party I has denied the defence setup by Party II and has stated that the demand for VDA has been made by the Union on behalf of the concerned workmen on the basis of settlement dated 22-3-05 which was signed under the Act. It is also stated that GMS is a registered Trade Union under the Trade Unions Act, 1926 and therefore is entitled to raise disputes on behalf of its members. It is stated that the Industrial law allows any registered Trade Union to raise an Industrial Dispute under the Act.

6. On the basis of the averments of the respective parties issues dated 15-3-12 at Exb. 10 were framed.

7. During evidence Party I examined Shri Kiran Gadekar as witness No. 1 and Shri P. Gaonkar as witness No. 2. On the other hand Party II examined Shri Sujay Rao, Sr. Manager (HR) and closed its case.

8. Heard Ld. Rep. Shri P. Gaonkar for Party I and Ld. Advocate Shri R. Kinnerkar for Party II. Ld. Advocate for Party II has also filed the written submissions. I have gone through the records of the case and have duly considered the submissions of both the parties. I am reproducing herewith the issues along with their findings and reasons thereof.

Sr. No.	Issues	Findings
1	2	3
1.	Whether the Party I proves that the action of the Party II in not paying the variable dearness allowance as per existing settlement dated 22-3-05 to the 14 workmen named in the schedule is illegal and unjustified?	Positive.
2.	Whether the Party II proves that the union/Party I has no locus standi to espouse the present demand?	Negative.
3.	Whether the Party II proves that the said demand cannot and do not constitute an Industrial Dispute?	Negative.

1	2	3
4. Whether the Party II proves that the said demand is already a subject matter in Ref. IT/29/09 and hence is barred by res-judicata or the principles analogous to it?		Negative.
5. What relief? What Order?		As per order below.

## REASONS

9. In their evidence Shri Kiran Gadekar and Shri P. Gaonkar have stated that as Party II had not paid VDA to the workers whose services were confirmed subsequent to the settlement dated 22-3-05 (Exb. 13), the Union i.e. GMS wrote a letter dated 6-7-09 (Exb. 14 colly) to Party II. It is in short mentioned in this letter that the settlement dated 22-3-05 is in accordance with sec. 18(3) of the Act and therefore is applicable to past, present and future workmen of the establishment and thus it is requested to extend its benefits to the workmen in this reference within 7 days on the receipt of this letter. These witnesses have further stated that Party II replied this letter vide reply dated 11-7-09 (Exb. 15). Reading of Exb. 15 reveals that Party II has taken the stand that the contents of Exb. 14 are incorrect, false and therefore does not deserve any credence. Evidence of these witnesses further indicate that thereafter Party I wrote letter dated 21-7-09 (Exb. 16 colly) to the Dy. Labour Commissioner, Panaji to intervene in the matter. Records reveal that thereafter by letter dated 10-8-09 (Exb. 17) Party II sent to the Assistant Labour Commissioner, Panaji copy of Exb. 15 which was sent by them to Party I. Records further reveal that Party II wrote a letter dated 10-8-09 (Exb. 18) to Shri P. Gaonkar the General Secretary of GMS stating in short that the said agreement is not in force as is evident from the period of settlement and in view of the matter being subjudice. Records also reveal that Party II then by letter dated 5-10-09 (Exb. 19) informed the Asst. Labour Commissioner, Panaji to close the matter and one of the grounds sought for such closure amongst others is that the agreement having ended on 30th June 2008 was not in force as evident from the period of settlement mentioned therein. Records also reveal that Party I replied the above letter vide reply dated 5-10-09 (Exb. 20) stating that settlement dated 22-3-05 is a conciliation settlement which is not replaced by a new settlement and that the COD raised is pending adjudication before

the Industrial Tribunal. In reply to Exb. 20, Party II by letter dated 5-11-09 (Exb.21) addressed to the Asst. Labour Commissioner Panaji amongst other objections informed that they are aware of the legal position that the benefits of a settlement continues but in this case the Union desires to interpret the terms in their own way, against the spirit of the settlement to which they were not even a party.

10. Upon going through the above correspondence, it becomes clear beyond doubt that all throughout it was the defence of Party II that settlement dated 22-3-05 did not apply to Party I workers because it was not in force as is evident from the period of settlement and also because Party I was not a party to this settlement. It is otherwise not disputed that the settlement dated 22-3-05 was operative from 1-7-04 to 30-6-08 and that the letter regarding not extending the benefits of VDA as per this settlement, was addressed by Party I Union to Party II on 6-7-09. It is further not in dispute that as the above settlement was to expire on 30-6-08, Party I raised COD vide letter dated 10-6-08 and that the conciliation talks having failed, the said COD bearing Ref. IT/29/09 is pending adjudication. It is otherwise admitted in the written statement by Party II that the benefits of the settlement continue even after termination or till replaced by a new settlement, award or agreement and admittedly the benefits of settlement dated 22-3-05 are not replaced by a new settlement, award or agreement till date.

11. In the above context, Ld. Rep. of Party I relied on the judgment in the case of **LIC V D. J.Bahadur, 1980 LAB 1218** in which it is observed as under:

*"There are three stages or phases with different legal effects in the life of an award or settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become non est but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given under s. 19(2) or 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like Nature, Law abhors a vacuum and even on the notice of termination under s.19(2) or (6) sequence and consequence cannot be just void but a*

*continuance of the earlier terms, but with liberty to both sides to raise disputes negotiate settlements or seek a reference and award. Until such a new contract or award replaced the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distil from the provisions of s. 19 a conclusion diametrically opposite of the objective, intendment and effect of the section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or settlement lives so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end- order in society-can it commit functional harakiri by leaving a conflict situation to lawless void?"*

12. Be that as it may, it is interesting to note that Party II in the written statement filed in this reference has taken additional defence other than the one taken in the correspondence referred to in para 9 above which is that instead of VDA the said concerned employees are receiving incentives of monthly average amounting to Rs. 4,000/- to 6,500/- and that from the day the concerned employees were engaged, VDA was not a part or parcel of their remuneration. It may however be mentioned that the pleadings in para 21 of the claim statement to the effect that by virtue sec.18 of the Act the benefits of a settlement are to be extended to all the workmen who have been confirmed in service subsequent to the settlement are not specifically denied in para 17 of the written statement, which in other words mean that the above legal position is accepted by Party II.

13. Undoubtedly, the settlement dated 22-3-05 which is at Exb. 13 is u/s 12(3) r/w sec. 18(3) of the Act. The relevant extract of sec. 18(3) of the Act reads as under:

- "18(1) .....
- (2) .....
- (3) *A settlement arrived at in the course of conciliation proceedings under this Act (or and arbitration award in a case where a notification has been issued under sub-section (3-A) of section 10-A) or (An Award*

*(of a Labour Court, Tribunal or National Tribunal) which has become enforceable) shall be binding on—*

- (a) *all parties to the industrial dispute;*
- (b) *all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board (arbitrator) (Labour Court, Tribunal or National Tribunal), as the case may be, records the opinion that they were so summoned without proper cause;*
- (c) *Where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;*
- (d) *where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the dispute and all persons who subsequently become employed in that establishment or part".*

14. It deserves to be noted that the legislature contemplates making such settlement binding even on such indifferent or unwilling workmen if the conciliation officer has to bring its bona fide to ensure industrial peace. From the language of clause (d) above it is clear that where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates, on the date of the dispute, and all persons who subsequently become employed in that establishment or part thereof, would be bound by the settlement or award. In order to bind the workmen, it is not necessary to show that the said workmen belong to the union which was a party to the dispute before the conciliator. The whole policy of s. 18 appears to be to give an extended operation to an award and a "settlement arrived at in the course of conciliation proceedings or adjudication proceedings", and that is the object with which the four categories of persons bound by such awards and settlements are specified.

15. Ld. representative of Party I relied on judgment in the case of **I.T.C Ltd. Workers Welfare Association and Anr. v/s The Management of I.T.C Ltd. Civil Appeal No. 822/2002** in which the scope of settlement u/s 12(3) as been discussed by referring to the judgment in the case of **Barauni Refinery Pragatisheel Shramik Parishad v/s Indian Oil Cooperation 1990(61) FLR 302(SC)**, as under:

*"Settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings (Section 18(i) and (ii) those arrived at in the course of conciliation proceedings (Section 18 (3)). A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement. But a settlement arrived at in the course of conciliation proceedings with a recognized majority union has extended application as it will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying assumption that a settlement reached with the help of the conciliation officer must be fair and reasonable and can, therefore safely be made binding not on the workmen belonging to the union signing the settlement but also on the others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority".*

16. Thus, reading of above discussions, makes it clear beyond doubt that the benefits of the settlement dated 22-3-05 would continue till replaced by a new settlement or award and that it binds even the Party I workmen. Therefore the contention of Party II that the settlement dated 22-3-05 has expired or that it cannot be extended to the parties who have not signed the same, cannot be accepted.

17. It is equally correct and as admitted by Shri Sujay Rao of Party II, that the said settlement is applicable only to the permanent workers. He has also stated that, in their company the permanent employees are those who have been given confirmation letters by the company. He has admitted that the 14 workers to this reference, have been issued confirmation letters by the company and therefore it is apparent that these 14 workers became entitled to claim the VDA in terms of settlement dated 22-3-05 from the date they became permanent. It is also stated by Shri Sujay Rao in his cross examination, that till date all these workers are not given VDA. It may be that in his cross examination Shri. P. Gaonkar has made it clear that as on the date, the reference is proceeding at the instance of only 5 persons namely Mr. Sakharam Gad, Mr. Nitesh Tari,

Mr. Kiran Gadekar, Mr. Gourish Gadekar and Mr. Goraknath Dhargalkar as rest of the workers whose names are mentioned in the order of reference namely Shri Mr. Abhinay Kerkar, Mr. Amol Gavde, Mr. Darshan Chari, Mr. Parag Gawande, Mr. Vaibhav Khadapkar, Mr. Petrose Fernandes, Mr. Kedar Naik, Mr. Dinesh Gaonkar and Mr. Navnath Gad have resigned from Party II, but, this by itself would not prevent these rest of the workers from claiming VDA in terms of the settlement dated 22-3-05 and this is because, these workers who have resigned would get VDA from the date they were confirmed in services till the date of their respective resignations i.e. their respective last working day.

18. Shri Kiran Gadekar in his cross examination has been shown his salary slip for the month of June, 2012 (Exb. 28). He has admitted that presently they are getting incentives ranging from Rs. 9,000/- to Rs. 10,000/- per month. He has also been shown the record of incentives paid to him and others from July, 2008 to May, 2012 (Exb. 29) and this is because it is the case of Party II that instead of VDA, the workers to this reference as also the others workers are given incentives to compensate VDA.

19. I have already pointed out in the discussion supra that the defence that instead of VDA the said concerned employees were getting incentives was not projected before the conciliation officer and therefore in my view the same is an after thought and even otherwise, payment of such incentives cannot displace the binding effect of conciliation settlement. The appointment letter of Shri. Kiran Gadekar is brought on record in his cross examination at Exb. 26 and that of Shri. Shakaram Gad at Exb. 39. The terms and conditions of the service are at Exb. 40. Apparently there is no clause of payment of VDA in the appointment letters issued to Party I workers. Nevertheless, as rightly pointed out by Ld. representative for Party I by virtue of law, the terms of settlement dated 22-3-05 have become a part and parcel of terms of appointments of these workers. Thus, absence of such a clause in the appointment letters of Party I workers cannot debar them from claiming VDA under the settlement dated 22-3-05.

20. It is also one of the contentions of Party II that Party I Union started functioning in the company somewhere in May/June 2008 and the union raised the grievance of VDA for the first time by letter dated 6-7-09 and therefore lot of time has elapsed since the time of formation of union

till sending of letter dated 6-7-09. To my mind, since there is no bar of limitation to claim VDA to which the workers are legally entitled to the above grievance of Party II cannot merit consideration. I also do not find any force in the case put up by Party II that when the company pays minimum wages, it is not required to pay VDA separately firstly because such was not a defence of Party II before conciliation officer and secondly because Party I has been claiming this VDA legally by virtue of settlement u/s 18(3) of the Act. Ld. Advocate fro Party II relied on the judgment in the case of **Airfreight Ltd. v/s State of Karnataka and Others, dt. 4-8-99 in C.A. No. 4259 of 99** the subject matter in which pertains to a notification issued by the State Government fixing the minimum rates of wages payable to the categories of employees specified in the notification and the employees had contended that company was required to pay VDA on the basis of notification issued. Apparently, the above subject matter is not at all related to the set of facts in the instant case and thus this judgment is not applicable to the present case.

21. As regards the designations of Party I workers which are as technicians/Electrician, I would not like to go into this aspect of the matter and this is because undoubtedly, the settlement dated 22-3-05 would apply to all permanent workers irrespective of their designations.

22. Ld. advocate for Party II also relied on the judgment in the case of **Process Technicians and Analysts Union v/s India and Other** contending that each of the employees constitute different class which is receiving different pay packets because of different circumstances which have affected the wage structure of each class and this cannot be called discrimination. I have gone through this judgment and have noted that that set of facts in the same are totally different from the set of facts in the instant case and therefore the ratio in this judgment is not applicable to the instant case.

23. At any rate since discussion above makes it clear that Party I has succeeded in proving this issue, the same is answered in the positive.

24. *Issue No. 2:* It is stated by Shri Sujay Rao that GMS has not filed any document to show that it is a Registered Trade Union under the Trade Union Act, 1926 or that it is entitled to organize the workers belonging to "Auto Dealership and Marketing Activity", the industry engaged in by Party II. It is further stated that the said union is

not a signatory to the settlement dated 22-3-05. It is also stated that as per the constitution of the Union, the appropriate Government is the Central Government.

25. It may be mentioned that Party II in the cross examination of Shri Kiran Gadekar has produced the documents of registration of the union alongwith the copy of constitution and the rules of the union at Exb. 32 colly. Amongst the documents comprising Exb. 32 colly is an application for registration of Trade Unions which indicates that Party I union was registered under the Trade Unions Act, 1926. Exb. 32 colly also comprises of the Constitution and Rules of GMS which reveals that one of the objects of GMS is to organize and unite the persons employed in the different industrials in the Union territory of Goa and Daman and Diu and to regulate their relation with the employees. Schedule A annexed to this document indicates that GMS was authorized to represent the workers employed in several industries listed therein. Clause 19 of schedule A refers to ' Motor Vehicles' and clause 21 refers to 'Commerce (a) Wholesale & Retail Trade'. Admittedly, the activities of Party II company include the sales and services of vehicles and these activities are squarely covered under clause 19 and 21 of schedule A to the constitution. The consequence thereof is that Party I Union has locus standi to espouse the dispute on behalf of the workmen of Party II company. Regarding the objection of Party II that as per the constitution of the Union, the appropriate Government is the Central Government, Shri P. Gaonkar has made it clear in his cross examination that if the registration of the Trade Union is done with the Central Government then the appropriate Government is the Central Government and if the registration is done with the State Government then the appropriate Government is the State Government. The above explanation given by Shri P. Gaonkar is not denied by Party II, by suggesting otherwise and even otherwise it is clear from Exb. 32 colly that the registration of Party I Union is done with the State Government. Being so, the above objection raised by Party II cannot stand. As regards the statement of Shri Sujay Rao that Party I union was not even a signatory to the settlement dated 22-3-05, it cannot be disputed that it is not the requirement of law that only the union which is the signatory to the settlement can raise the dispute arising out of the said settlement and therefore the above statements made by Shri Sujay Rao merit no consideration. Hence my findings.

26. *Issue No. 3:* Since settlement dated 22-3-05 is a conciliation settlement entered into under the Industrial Disputes Act, the demand relating to such settlement is apparently an Industrial Dispute it being a dispute between the employer and the workmen connected with the terms of employment. Hence my findings.

27. *Issue No. 4:* The order of reference dated 4-9-09 (Exb. 24) was registered as Ref. No IT/29/09 (Exb. 25). Demand No. 4 in Exb. 24 is for revision in VDA. No doubt, in the claim statement in Ref. No. IT/29/09 with reference to demand No. 4, it is pleaded that "Party I respectfully submits that it is necessary to introduce the Variable Dearness Allowance" but it cannot be lost sight of the fact that in terms of order of reference this demand is for revision in VDA and not for introducing VDA.

28. That apart, the above aspect has been made clear by Shri Kiran Gadekar in his cross examination by stating that it is an error and in fact the demand was for revision in VDA which is clear from the order of reference. It may be mentioned that the above statement made by Shri Kiran Gadekar is not denied in his further cross examination. Even for that matter, the suggestion put to Shri P. Gaonkar in his cross examination that the demand made in this reference is already the subject matter of Ref. No. IT/29/09 has been answered by him by saying that in IT/29/09, revision in VDA is sought and this answer given by Shri P. Gaonkar is not denied by Party II. Even for that matter, Shri Sujay Rao of Party II has admitted in his cross examination that in the COD in Ref. No. IT/29/09 there is claim for revision in VDA. This being the situation, the contention of Party II that the demand for VDA in this reference was already a subject matter in Ref. No. IT/29/09 and therefore is barred by res judicata or the principles analogous to it, does not stand. Hence my findings.

29. In the result and in view of discussion supra, I pass the following:

#### ORDER

(1) It is hereby held that the action of the management of M/s. Chowgule Industries Private Limited, Campal, Panaji, Goa, in not paying the Variable Dearness Allowances as per existing settlement dated 22-3-2005 to the following 14 workmen namely, Mr. Sakharam Gad, Mr. Kiran Gadekar, Mr. Abhinay Kerkar, Mr. Petrose Fernandes, Mr. Amol Gavde, Mr. Kedar Naik, Mr. Darshan Chari, Mr. Dinesh Gaonkar, Mr. Parag Gawande, Mr. Gourish Gadekar, Mr. Vaibhav

Khadapkar, Mr. Goraknath Dhargalkar, Mr. Nitesh Tari and Mr. Navnath Gad represented by the Gomantak Mazdoor Sangh, Ponda, is illegal and unjustified.

(2) It is hereby further held that the five workmen who are still in employment of Party II, namely, Mr. Sakharam Gad, Mr. Nitesh Tari, Mr. Kiran Gadekar, Mr. Gourish Gadekar and Mr. Goraknath Dhargalkar, shall be paid VDA from the date they have been confirmed in the services and the remaining workmen namely, Mr. Abhinay Kerkar, Mr. Amol Gavde, Mr. Darshan Chari, Mr. Parag Gawande, Mr. Vaibhav Khadapkar, Mr. Petrose Fernandes, Mr. Kedar Naik, Mr. Dinesh Gaonkar and Mr. Navnath Gad shall be paid VDA from the date they have been confirmed in the services till the date of their resignations i.e. till their respective last dates in service.

2. No order as to costs.

Inform the Government accordingly.

(B. K. Thaly)  
Presiding Officer  
Industrial Tribunal-  
cum-Labour Court



Department of Public Assistance (Provedoria)

Institute of Public Assistance (Provedoria)

#### Order

No. 1-1-2015/IPA 2006

On the recommendation of the Departmental Promotion Committee, Smt. Vaishali V. Govekar, Stewardess is promoted to the post of Social Welfare Officer (Group 'B', Gazetted) under the cadre of Provedoria in the Pay Band PB—2 Rs. 9,300-34,800 plus Grade Pay Rs. 4,200/- (VIth Pay Commission Scale) on regular basis. Her promotion shall be effective from 01-09-2015.

She will be on probation for a period of two years.

She should exercise her option for fixation of her pay under FR 22(I) (a) (1) within one month from the date of issue of this order.

She is posted at IPA (Provedoria), South Goa Branch Office, Margao-Goa. She shall hold the additional charge of the post of Stewardess, Asylum of Margao until further orders.

If the promotional post is not accepted within a month by Smt. Vaishali V. Govekar, her promotion order will be cancelled.

OFFICIAL GAZETTE — GOVT. OF GOA

SERIES II No. 25

19TH SEPTEMBER, 2015

This issues with the approval of the Government vide U.O. No. 3394/F dated 22-05-2015.

Vasanti H. Parvatkar, Director, IPA (Provedoria).

Panaji, 25th August, 2015.

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Department of Revenue

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Order

No. 23/14/2009-RD

Whereas, the Government of Goa, vide Notification No. 23/14/2009-RD dated 02-12-2013, issued under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Act 1 of 1894) (hereinafter referred to as the "said Act"), and published in the Official Gazette, Series II No. 37 dated 12-12-2013, notified that the land specified in the Schedule thereof (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. Land Acquisition for improvement and B/T of road from MDR-49 joining Karashirmol, Parve Pana & link road from Government High School to Mirandawada in V. P. Agonda in Canacona (hereinafter referred to as the "said public purpose");

And whereas, the Government of Goa, considered the report made by the Collector under sub-section (2) of Section 5-A of the said Act and on being satisfied that the said land is needed for the said public purpose, vide Notification No. 23/14/2009-RD dated 11-12-2014, issued under Section 6 of the said Act and published in the Official Gazette, Series II, No. 38 dated 18-12-2014, declared that the said land is required for the said public purpose.

Now, therefore, in exercise of the powers conferred by Section 7 of the Land Acquisition Act, 1894 (Act 1 of 1894), the Government of Goa hereby directs the Collector, South Goa District, Margao-Goa to take the order for acquisition of the said land.

By order and in the name of the Governor of Goa.

Anju S. Kerkar, Under Secretary (Revenue-II).  
Porvorim, 8th September, 2015.

Department of Transport

Direcotorate of Transport

Order

No. D.Tpt/EST/285-III/2015/3024

Ref.: Order No. D.Tpt/EST/285-III/2015/706 dated 27-02-15 & Ad hoc Promotion effective from 02-03-2015.

The Government is pleased to extend the ad hoc promotion of Shri Prakash Kholkar to the post of Assistant Director of Transport for a further period of six months i.e. upto 01-03-2016.

By order and in the name of the Governor of Goa.

Arun L. Desai, Director & ex officio Addl. Secretary (Transport).

Panaji, 31st August, 2015.

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Order

No. 5/2/93-Tpt/2015/3042

The following Assistant Directors of Transport are hereby transferred with immediate effect on administrative grounds and in public interest.

Sr. No.	Name of the Officer	Present posting	Office to which transferred
1.	Shri Pralhad Desai	A.D.T., Ponda	A.D.T., Enf. South, Margao.
2.	Shri Sandeep Desai	AD.T., Enf. South, Margao	A.D.T., Dharban-dora.
3.	Shri Kishor Lotlikar	A.D.T., Canacona	A.D.T., Ponda.
4.	Shri Rajesh alias Ramkrishna B. Naik	A.D.T., Quepem	Shall hold charge of ADT, Canacona in addition to ADT, Quepem.

The above officers stands relieved from their present postings with immediate effect and shall not avail any joining period or any type of leave till they assume their new postings.

By order and in the name of the Governor of Goa.

Arun L. Desai, Director & ex officio Addl. Secretary (Transport).

Panaji, 1st September, 2015.

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